

1 MICHAEL LEHNERS, ESQ.
2 429 Marsh Ave.
3 Reno, Nevada 89509
4 Nevada Bar Number 003331
5 (775) 786-1695
6 email michaellehners@yahoo.com
7 Attorney for Chapter Seven Trustee
8 Donald Gieseke
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Ex 12/15/15

10 UNITED STATES BANKRUPTCY COURT
11 DISTRICT OF NEVADA

12 oOo

13 IN RE

14 PATMONT MOTOR WERKS, INC.,

15 Debtor(s).
16 _____/

BK-N- 12-52799-btb
CHAPTER 7

Hearing Date: _____

and Time: _____

Mtn No. _____

Est Time: 5 Minutes

MOTION TO APPROVE COMPROMISE
OF CLAIM

17 COMES NOW Chapter Seven Trustee above named by and through
18 undersigned counsel and files the following Motion to Approve the
19 Compromise of the Estate's claim against Steven Patmont, Hannalore
20 Patmont aka Hannelore Patmont.

21 **1. Background**

22 The Debtor filed bankruptcy under Chapter Eleven of Title Eleven,
23 United States Code on December 14, 2012. On November 12, 2014 this
24 Court entered an Order converting the case to one under Chapter Seven.
25 Donald Gieseke was appointed as the Chapter Seven Trustee.

26 Steven Patmont is the president of Patmont Motor Werks, Inc., and
27 he owns 50% of the capital stock. Hannalore Patmont is the treasurer of
28 Patmont Motor Werks, Inc., and she owns 50% of the capital stock. The

1 Patmonts made significant capital investments to Patmont Motor Werks.
2 As of January 1, 2012 the Debtor owed the Patmonts in excess of
3 \$1,500,000.00.

4 Sometime after January 1, 2012 but before December 14, 2012
5 Steven and Hannalore Patmont received payment of approximately
6 \$89,000.00 from Patmont Motor Werks. Steven and Hannalore Patmont
7 continued to make capital contributions to the Debtor during the 2012
8 year.

9 On June 23, 2015 the Trustee filed an adversary proceeding
10 against Steven and Hannalore Patmont for recovery of alleged
11 preferential transfers. The parties have exchanged documents,
12 conducted a Rule 26(f) meeting and attended the adversary scheduling
13 conference. The Defendant had scheduled a deposition of the Trustee on
14 December 14, 2015, but the parties reached a settlement prior to the
15 deposition.

16 The parties have agreed that the Defendants shall pay the Trustee
17 the sum of \$10,000.00 to settle the alleged preferential transfers in full.

18 **2. Authority**

19 Federal Rule of Bankruptcy Procedure 9019 governs compromises
20 of settlement in bankruptcy. It provides, in pertinent part:

21 (a) Compromise. On motion by the trustee and after a
22 hearing on notice to creditors, the debtor and indentured
23 trustee as provided in Rule 2002(a) and to such other
24 entities as the court may designate, the court may approve a
compromise or settlement.

25 Fed.R.Bankr.P. 9019(a).

26 Generally, compromises are favored in bankruptcy. See, 9 *Collier*
27 *on Bankruptcy*, ¶ 9019.03[1] (15th ed. 1990). The law favors
28

1 compromise and not litigation for its own sake, *In re Blair*, 538 F.2d 849,
 2 851 (9th Cir. 1976), and as long as the bankruptcy court amply considers
 3 the various factors that determined the reasonableness of the
 4 compromise, the court's decision must be affirmed. *Matter of Walsh*
 5 *Constr., Inc.*, 669 F.2d 1325, 1328 (9th Cir.1982).

6 Thus, the court must consider whether the settlement is
 7 reasonable given the particular circumstances of the case. *In re A & C*
 8 *Properties*, 784 F.2d 1377, 1380-81 (9th Cir. 1986). In the Ninth Circuit,
 9 the fair and equitable settlement standard requires consideration of:

- 10 1. The probability of success in the litigation;
- 11 2. The difficulties, if any, to be encountered in the matter
- 12 of collection;
- 13 3. The complexity of the litigation involved and the
- 14 expense, inconvenience and delay necessarily attending
- 15 it;
- 16 4. The interest of the creditors and a proper deference to
- 17 their reasonable views in the premises, which is
- 18 considered paramount.

19 Id., quoted with approval in *In re Woodson*, 839 F.2d 610, 620
 20 (9th Cir.1988). The Court need not conduct a mini trial, but should
 21 canvass the issues in order to determine that the settlement meets the
 22 standards set forth in *A & C Properties*. *In re Schmitt*, 215 B.R. 417, 423
 23 (9th Cir BAP 1997). When assessing a compromise, courts need not rule
 24 upon disputed facts and questions of law, but rather only canvass the
 25 issues. Otherwise, there would be no point in reaching a settlement, and
 26 the parties may as well try the case. *In re HyLoft*, 451 B.R. 104, 109
 27 (Bkrcty. D. Nev. 2011).

28 **A. Probability of Success**

1 The issue that would have to be litigated is whether the
2 distributions to the Patmonts was on account of a debt or equity. *In re*
3 *Pacific Express, Inc.*, held that the Code did not authorize courts to
4 characterize claims as equity or debt, but limited courts to the statutory
5 remedy of equitable subordination under 11 U.S.C. § 510. *In re Fitness*
6 *Holdings Int'l, Inc.*, 714 F.3d 1141, 1147-48 (9th Cir. 2013) overruled
7 *Pacific Express*, holding that the Bankruptcy Code gives courts the
8 authority to recharacterize claims in bankruptcy proceedings.

9 The Trustee would point out that the Debtor's Amended Statement
10 of Financial Affairs indicates that \$113,000.00 was paid out as capital
11 contributions during the 2012 year. See (DE35).

12 This is not the end of the analysis. As noted by *Fitness Holdings*,
13 the circuits have taken different approaches in identifying the legal
14 framework for this recharacterization. *Compare Lothian Oil*, 650 F.3d at
15 543 holding that, under the *Butner* principle, courts are required to
16 define claims by reference to state law, and are thus required to
17 recharacterize purported debt as equity where state law would treat the
18 asserted interest as an equity interest with *SubMicron*, 432 F.3d at 454–
19 56 holding that a court has the equitable authority to recharacterize a
20 transaction and determine if it is more like debt” or “equity. See also
21 *AutoStyle Plastics*, 269 F.3d at 749–50 (announcing an eleven-factor test,
22 derived from federal tax law, for determining whether a purported debt
23 is in fact equity.

24 This factor greatly affects the probability of success on the merits.

25 **B. Difficulties of Collection**
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27
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1 The Trustee does not know the financial condition of the Patmonts.
2 Since they are individuals, they would have the option of filing their
3 own bankruptcy if a judgment were obtained.

4 **C. Complexity of Litigation**

5 The question of how to classify debt as equity and vice versa is
6 very complicated as illustrated by *Fitness Holdings'* comments.

7 **D. Interest of Creditors**

8 The settlement is in the best interest of the creditors because it
9 will save administrative expenses. Counsel's fees in litigating this
10 adversary to settlement are under five thousand dollars. If the matter
11 were litigated to conclusion, then the expenses would be more, and there
12 is no guarantee of success or collection.

13 In light of the foregoing, the Trustee respectfully requests that this
14 Court approve the settlement.

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16 Dated: This 11 day of December, 2015

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19 By: 

20 Michael Lehnert, Esq.
21 429 Marsh Ave.
22 Reno, Nevada 89509
23 Nevada Bar Number 003331
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